IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPLICATION NO.26 OF 2003

The Commissioner of Central
Excise, Mumbai-IV ...Applicant.

V/s.

M/s.Malti Arts Pvt.Ltd. ...Respondents.

Mr.S.M.Shah with Mr.Y.R.Mishra for the Applicant.
None for the Respondent.

CORAM: S.RADHAKRISHNAN &
J.H.BHATIA, JJ.
DATE : 30th June, 2005.

P.C.:

1. Heard the learned counsel for the Applicant. In the above, the Applicant has sought to raise the following two substantial questions of law.

i. "Whether the Tribunal is within its rights to out of the order of the Appellate award Interest on deposits made under Sec.35F of Central Excise Act, 1944, under Section 11BB ibid which relates to Interest on delayed refund".

ii. "Whether the Tribunal is

justified in awarding Interest when the statutory provision under Section 11BB do not provide for the same and whether the Tribunal has any inherent power to do so, beyond the statutory provision of the Central Excise Act, 1944".

2. It appears that this issue has already been concluded by the judgment of the Supreme Court in **Commissioner of Central Excise v. I.T.C. Limited, 2005 (179) ELT 15 (SC)**. In the light of the above judgment of the Supreme Court, the Central Excise Board has already issued a circular dated 8th December, 2004 whereby, the Department has decided not to pursue the matters wherein the Court has awarded interest on delayed refunds in such matter.

3. Under these circumstances, having regard to the aforesaid judgment of the Supreme Court and the circular issued by the Central Excise Board, the learned counsel for the Petitioner seeks leave to withdraw the

application. The Application is allowed to be withdrawn and dismissed.

(S.RADHAKRISHNAN,J.)

(J.H.BHATIA, J.)